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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 MAX R. PROVINO, et al.,

9 Plaintiffs

10 v.

11 U.S. DOJ, et al.,

12 Defendants

Case No.: 3:24-cv-00530-MMD-CSD

**Report & Recommendation of  
United States Magistrate Judge**

Re: ECF Nos. 1, 3, 5, 6

13 This Report and Recommendation is made to the Honorable Miranda Du, United States  
14 District Judge. The action was referred to the undersigned Magistrate Judge pursuant to  
15 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

16 **I. BACKGROUND**

17 Plaintiff Max Provino filed an application to proceed *in forma pauperis* (IFP) and pro se  
18 complaint and various documents. (ECF Nos. 1, 2, 3, 5, 6.) The court issued an order granting  
19 Plaintiffs' IFP application and now screens the original complaint.<sup>1</sup> (ECF No. 4.)

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23 <sup>1</sup> The court ordered Plaintiff Helen Provino to file a completed IFP application or pay the filing fee by December 26, 2024, or face dismissal of this action without prejudice. (ECF No. 4). Plaintiff did not comply. Instead, Max Provino filed a document that the court should not "harass" Helen Provino because she is a military veteran. (ECF No. 6).

1 Plaintiff alleges in his complaint that “George Walker Bush was operating a[n] attorney  
 2 fleecing ring at Prudential Brownsville, Texas.” Plaintiff further alleges a \$318,000 “Hurricane  
 3 Reimbursement Check” was embezzled and stolen from Plaintiffs by a numerous defendants  
 4 including the former governor of Texas, U.S. Department of Justice attorneys and numerous others  
 5 (ECF No. 2). Plaintiff further alleges this is a “DOJ coverup of their federal coverup of federal  
 6 secrets act” *Id.*

7 Plaintiffs allege the basis for the court’s jurisdiction is both federal question and diversity  
 8 of citizenship, but they do not cite any federal statutes and merely state they are “citizens of the  
 9 U.S.A.” (ECF No. 1-1, p3). Plaintiffs do not state sufficient facts to indicate how Defendants are  
 10 responsible for the alleged embezzlement or theft of their property. For reasons state below, it is  
 11 recommended that Plaintiffs’ complaint should be dismissed with prejudice.

## 12 II. SCREENING

### 13 A. Standard

14 “[T]he court shall dismiss the case at any time if the court determines that-- (A) the  
 15 allegation of poverty is untrue; or (B) the action or appeal-- (i) is frivolous or malicious; (ii) fails  
 16 to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant  
 17 who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

18 Dismissal of a complaint for failure to state a claim upon which relief may be granted is  
 19 provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii) tracks  
 20 that language. As such, when reviewing the adequacy of a complaint under this statute, the court  
 21 applies the same standard as is applied under Rule 12(b)(6). *See e.g. Watison v. Carter*, 668 F.3d  
 22 1108, 1112 (9th Cir. 2012) (“The standard for determining whether a plaintiff has failed to state a  
 23 claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule

1 of Civil Procedure 12(b)(6) standard for failure to state a claim.”). Review under Rule 12(b)(6) is  
2 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723  
3 (9th Cir. 2000) (citation omitted).

4 The court must accept as true the allegations, construe the pleadings in the light most  
5 favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*, 395  
6 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are “held to less stringent  
7 standards than formal pleadings drafted by lawyers[.]” *Hughes v. Rowe*, 449 U.S. 5, 9 (1980)  
8 (internal quotation marks and citation omitted).

9 A complaint must contain more than a “formulaic recitation of the elements of a cause of  
10 action,” it must contain factual allegations sufficient to “raise a right to relief above the speculative  
11 level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading must contain  
12 something more ... than ... a statement of facts that merely creates a suspicion [of] a legally  
13 cognizable right of action.” *Id.* (citation and quotation marks omitted). At a minimum, a plaintiff  
14 should include “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570; *see*  
15 *also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

16 A dismissal should not be without leave to amend unless it is clear from the face of the  
17 complaint that the action is frivolous and could not be amended to state a federal claim, or the  
18 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d  
19 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

## 20 **B. Plaintiff’s Action Should be Dismissed with Prejudice**

21 As the Supreme Court has noted, “a litigant whose filing fees and court costs are assumed  
22 by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous,  
23 malicious, or repetitive lawsuits.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). “To prevent such

1 abusive or captious litigation, § 1915(d) [now § 1915(e)(2)(B)(i)] authorizes federal courts to  
2 dismiss a claim filed [IFP] ‘if the allegation of poverty is untrue, or if satisfied that the action is  
3 frivolous or malicious.’” *Id.* “Dismissals on these grounds are often made *sua sponte* prior to the  
4 issuance of process, so as to spare prospective defendants the inconvenience and expense of  
5 answering such complaints.” *Id.* (citation omitted).

6 A complaint is frivolous “where it lacks an arguable basis either in law or in fact.” *Id.* This  
7 term “embraces not only the inarguable legal conclusion, but also the fanciful factual allegation.”  
8 *Id.* Section 1915(e)(2)(B)(i) “accords judges not only the authority to dismiss a claim based on an  
9 indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s  
10 factual allegations and dismiss those claims whose factual contentions are clearly baseless.” *Id.* at  
11 327. This includes “claims of infringement of a legal interest which clearly does not exist” and  
12 “claims describing fantastic or delusional scenarios.” *Id.* at 327-28.

13 Plaintiffs’ complaint and subsequent filings of documents present an unintelligible  
14 conspiracy, fantastic, and/or delusional allegations, and as such, this action should be dismissed  
15 with prejudice as frivolous.

### 16 III. RECOMMENDATION

17 **IT IS HEREBY RECOMMENDED** that the District Judge enter an order **DISMISSING**  
18 this action **WITH PREJUDICE**.

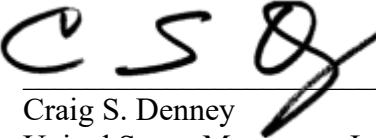
19 The Plaintiffs should be aware of the following:

20 1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to  
21 this Report and Recommendation within fourteen days of being served with a copy of the Report  
22 and Recommendation. These objections should be titled “Objections to Magistrate Judge’s Report  
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1 and Recommendation” and should be accompanied by points and authorities for consideration by  
2 the district judge.

3 2. That this Report and Recommendation is not an appealable order and that any notice of  
4 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed  
5 until entry of judgment by the district court.

6 Dated: April 30, 2025.

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8 Craig S. Denney  
United States Magistrate Judge